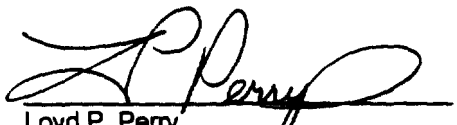


In summary, in consideration of the above cited information, I believe that JOSEPH FRANK PTAK did knowingly and willfully operate unlicensed radio equipment in violation of 47 U.S.C. § 301.



Loyd P. Perry  
Resident Agent, Houston, Texas, FCC

Attachment B (Perry)



**FEDERAL COMMUNICATIONS COMMISSION**

**Houston Field Office  
1225 North Loop West - Suite 900  
Houston, Texas 77008**



April 17, 1997

Joseph Frank Ptak  
505 Patricia  
San Marcos, Texas 78666

Certified Mail No. P554746641  
Return Receipt Requested

RE: Case # HU-970407

SUBJ: **WARNING FOR UNLICENSED OPERATION OF RADIO TRANSMITTING  
EQUIPMENT**

Mr. Ptak:

An investigation by this office has determined that on April 9, 1997, you operated radio transmitting equipment on the frequency 105.900 MHz. The transmissions emanated from your residence located at 505 Patricia, San Marcos, Texas. A search of Federal Communications Commission ("Commission") records confirms your admission that no valid license, issued by the Commission for this operation, exists. In view of these facts, please direct your attention to the provisions of the Communications Act of 1934, as amended ("Act"), and the Commission's Rules and Regulations ("Rules") governing the operation of radio transmitting equipment.

Operation of radio transmitting equipment, other than certain low powered devices operated in accordance with Part 15 of the Rules, may be operated only upon issuance by this Commission of a station license. Unlicensed operation is a violation of Section 301 of the Act, 47 U.S.C. §301, and may subject the operator to substantial monetary fines, *in rem* forfeiture action, and criminal sanctions including imprisonment. See 47 U.S.C. §§ 401, 501, 503, 510. Because unlicensed operation creates a danger of interference to important radio communications services and may subject the operator to severe penalties, we emphasize the importance of complying strictly with the legal requirements mentioned above. **Operation of radio transmitting equipment without proper authority granted by the Commission should *cease immediately*.**

This warning requires no reply. However, within thirty days of the date of this letter, you may submit any information relevant to this matter directed to the address in the letterhead above.

A handwritten signature in cursive script, appearing to read "L. Perry".

**LOYD P. PERRY**

*Resident Agent, Houston Field Office*

Attachment C (Perry)

P 554 746 641

US Postal Service

**Receipt for Certified Mail**

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

Sent to	Joseph F. Ptak
Street & Number	505 Patricia
Post Office, State, & ZIP Code	San Marcos TX 78666
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	UWL for KIND

PS Form 3800, April 1995

Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- ☐ Addressee's Address
- ☐ Restricted Delivery

Consult postmaster for fee.

**3. Article Addressed to:**

Joseph Frank Ptak  
505 Patricia  
San Marcos, TX 78666

**4a. Article Number**

P554 746 641

**4b. Service Type**

- |   |   |
|---|---|
| <input type="checkbox"/> Registered                     | <input checked="" type="checkbox"/> Certified |
| <input type="checkbox"/> Express Mail                   | <input type="checkbox"/> Insured              |
| <input type="checkbox"/> Return Receipt for Merchandise | <input type="checkbox"/> COD                  |

**7. Date of Delivery**

4/19/97

**5. Received By: (Print Name)**

**8. Addressee's Address (Only if requested and fee is paid)**

**6. Signature: (Addressee or Agent)**

X *Joseph F. Ptak*

PS Form 3811, December 1994

Domestic Return Receipt

Thank you for using Return Receipt Service.

Attachment D (Perry)



**FEDERAL COMMUNICATIONS COMMISSION**

Compliance and Information Bureau  
Washington, D.C. 20554

JUN 09 1997

Mail Stop 1500E3

J. Patrick Wiseman, Esquire  
1004 West Avenue  
Austin, TX 78701-2019

Dear Mr. Wiseman:

On April 3, 1997, the Gettysburg Office of the Federal Communications Commission received a letter, dated March 18, 1997, from Jeffrey "Zeal" Stefanoff, Joseph F. Ptak, and Joel Dean Simpson, publishers of the *Hays County Guardian*. In the letter, Mr. Stefanoff, Mr. Ptak, and Mr. Simpson, stated that they are operating an unlicensed FM radio station on 105.9 MHz in San Marcos, Texas, and requested a waiver of the Commission's rules. Additionally, they enclosed a check, in the amount of \$25, payable to the Commission. You were designated as their legal representative. A copy of the letter is enclosed for your review.

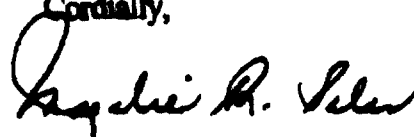
This type of broadcasting activity by your clients constitutes broadcasting without a license. Such unlicensed broadcast operation contravenes Section 301 of the Communications Act, 47 U.S.C. §301, and is subject to civil sanctions, forfeiture, or criminal penalties. 47 U.S.C. §§501, 502, 503, 510. You should advise your clients to refrain from engaging in this activity.

Your clients' letter states that if the Commission does not "have a category for what we are or what we are trying to do..., then how about issuing us one of your waivers." This general request for a waiver is insufficient. Your clients must apply to the Commission for a license along with a fully supported request for waiver of the relevant rules that limit low power FM service. See United States v. Stoner Broadcasting Co., 351 U.S. 192, 205 (1956) (waiver hearing provided for parties presenting completed applications and adequate reasons for waiver). If the Commission denies such a request for waiver, your clients can appeal to the

U.S. Court of Appeals for the D.C. Circuit pursuant to 47 U.S.C. §402(b)(1). See Application for Review of Stephen Paul Danifer, 11 FCC Rod 718 (1995).

Please be advised that, by separate correspondence, the Commission has returned the \$25 check to your clients.

Cordially,



Magalie R. Sales  
Chief, Compliance Division

Enclosure

cc: Mr. Jeffrey "Zeal" Stefnoff  
Mr. Joseph F. Ptak  
Mr. Joel Dean Simpson  
*Hays County Guardian*  
P.O.Box 305  
San Marco, Texas 78667

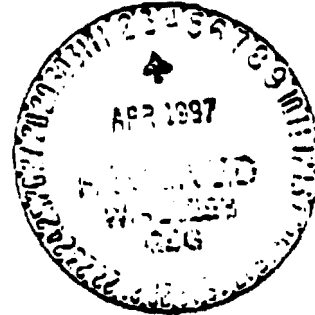
Attachment E (Perry)

March 18, 1997

Hays County Guardian  
P.O. Box 305  
San Marcos, Texas 78667

Federal Communication Commission  
1270 Fairfield Rd.  
Gettysburg, Pa.

17325-7245



Dear Folks,

We are sending this letter to notify and communicate to you all what is going on down here in Texas, at least our part, and let you know of the solutions we have worked out and some other possible solutions that might prevent further problems in the future.

Our problem is that in our town and area we have no access to communicate community and public concerns amongst the local citizens and there is also decline on grass root news media groups such as ourselves, because of the corporate take over of small town newspapers.

Originally we started a local newspaper, noncommercial, to create a public dialog as all the regular papers did not seem to be presenting all opinions. We did this for almost a year until a government agency banned our paper causing problems with our advertising and effectively put us out of operation. After four years we finally won in the United States Supreme Court and since then we have been only been able to publish a few times. It is hard to recapture that energy and as technology has advanced we have tried other routes.

We first had one of our publishers become a television producer but it seems that cable access is totally inaccessible to the local citizens. Do you all have anything to do with this as this seems to be a great problem? We do have a show on in another city but it does not reach our community.

The other problem is that the large city of Austin to the north has stolen our local FM radio station. They have their tower at the closest point to Austin and just in the very edge of our county. Their offices are in Austin, it is a long distance call just to talk to them, their advertising comes out of Austin, there shows are about Austin and their news is about Austin. People from our poor town can not even afford to advertise on this station. We are so poor down here there is no one I know of rich enough to afford a license. So you can see our dilemma.

Well we recently heard about a court case out in California about micro-radio and we realized that was our solution. We have meet with the people from California and further increased our information about broadcasting without a license under 100 watts. So now we are opening a station here in San Marcos on FM 105.9. We will do no advertising and we will create a community format so other opinions and ideas can be expressed locally in our community. We have done our homework and no one uses or is near this airwaves we have chosen, so we will not interfere with any other radio station. We have a transmitter that really holds our signal well and we put out a really fine sound. Built from Radio Shack parts and such, can you believe where modern technology has taken us? It was like when we did our newspaper, we used laser print from Kinko's and typed the stories in at the community ~~aaa~~ access computers at the local university. That way it was affordable to the local folk as you did not have to have a line-o-type machine, only printing costs. But now a days with all this new technology we can eliminate even the somewhat expensive costs of printing. We have less money in this station then what it cost to publish one edition of our paper. This is

like a modern day soapbox, except modern, and not based on owning enough pieces of expensive equipment and expensive licenses to control the spectrum. We could have never published without the technology advance of the computer and laser, just as we would have never been able to broadcast without the technology advancements in transmitter and electronic components. We are really trying to be top shelf. We would appreciate it if you would allow the poor people this station so we can have a little free speech down here and not put a rich peoples license on our frequency.

In fact we think this could be a solution for all communities here in central Texas. We understand that this 105.9 frequency has a historical record of people in the central Texas area using this for freedom of speech and community opinions and ideas and since licenses are only available to the rich, why not just leave 105.9 open and maybe a couple other frequencies and allow local folks open noncommercial speech. Kind of like open night mike at a bar. Imagine driving down IH 10 and from Houston to El Paso and leaving your radio on 105.9 and as you passed through each county and community the broadcasting would be from local folks talking about their community as one station passed and faded another would start. All under 100 watts. What ideas could be communicated? Freedom of speech on the airwaves with out regard to your economic level to present an opinion. This way common folk and poor folk can have a little of the airwaves for speech.

You know that pamphlets and leaflets, and we believe now radio, have been historic weapons in the defense liberty, as the pamphlets and words of Thomas Paine and others in our own history attest. We will be noncommercial speech about matters of the highest public concern, political and economic reform and the local and international environment. We will operate twenty-four hours a day, seven days a week. No one will get paid and no profit gained on this endeavor. We might have to get some bands together to play a benefit or maybe walk the streets door to door to raise the money for electricity, a phone and such but we will get by. You know most of our equipment so far has come out of dumpsters as we have a large university that the students throw away a lot of stuff. So if you do not have a category for what we are or what we are trying to do (free speech), then how about issuing us one of your waivers, it would be greatly appreciated.

If you got a real big problem with what we are doing then you better contact our lawyer, J. Patrick Wiseman, 1004 West Avenue, Austin, Texas 78701-2019, phone (512) 479-5017, otherwise we are including a check for all your trouble in the amount of twenty five dollars.

We really appreciate your time and concern for us folks down here in central Texas and hope you listen to our plight as well as you listen to corporations and those people with lots of money that just want to make a profit off our community airwaves. If these airwaves frequencies have to flow through our body all the time maybe a few can be reserved for the citizens. Thanks a bunch for all.

Environmentally Yours,

*Joseph F. Prack*  
Joseph F. Prack  
Publisher  
Hays Co. Guardian

*Joel Dean Simpson*  
Joel Dean Simpson  
Publisher  
Hays Co. Guardian

*Jeffrey "Zeal" Stefanoff*  
Jeffrey "Zeal" Stefanoff  
Publisher  
Hays County Guardian  
P.O. Box 305  
San Marcos, Texas 78666

Attachment F (Perry)

UNITED STATES OF AMERICA

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

STATEMENT OF RECORD

I, **Magalie Roman Salas**, state that I am the duly appointed and authorized Secretary of the Federal Communications Commission and that as part of my duties, I have the care, custody, and control of all official records pertaining to the business of said Commission.

I further state, on information and belief, that: Commission employees have conducted a diligent search of the Commission's "Broadcast Applications Processing System" (BAPS) to determine whether the Commission had any broadcast application record of a license issued to Joseph Frank Ptak on the frequency 105.9 MHz in San Marcos, Texas.

The search disclosed that no license has been issued to Joseph Frank Ptak to broadcast on that frequency in San Marcos, Texas. The results of the search is not based on my personal knowledge, but is based on information examined by employees on behalf of the Commission, and I believe, therefore, that the result of the search is true and correct.

The Commission seal, affixed hereunder, shall be judicially recognized, 47 U.S.C. §154(h), and may be used as authentication of proof of an official record pursuant to Rule 44, Fed. R. Civ. P.



**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the seal of the Federal Communications Commission to be affixed, this  
1st day of June 1998

*Magalie Roman Salas*

**Secretary**

**EXHIBIT 5**  
**ROUND ROCK ORDER**

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

80593

In re Applications of	)	MM DOCKET NO. 90-608
	)	
ELINOR LEWIS STEPHENS	)	File No. BPH-880714ML
	)	
AUGUST COMMUNICATIONS GROUP, INC.	)	File No. BPH-880714MN
	)	
GRASS ROOTS RADIO, INC.	)	File No. BPH-880714NJ
	)	
For Construction Permit for a	)	
New FM Station on Channel 290C2	)	
in Round Rock, Texas	)	

MEMORANDUM OPINION AND ORDER

Issued: March 18, 1998

;

Released: March 20, 1998

1. Under consideration are: (a) a Joint Request for Approval of Settlement Agreement, filed on January 30, 1998, by Elinor Lewis Stephens ("Stephens"), August Communications Group, Inc. ("August"), Grass Roots Radio, Inc. ("Grass Roots"), and R. Steven Hicks ("Hicks") (collectively "Petitioners"); (b) a Supplement to Joint Request for Approval of Settlement Agreement, filed on February 2, 1998, by the Petitioners; (c) a Petition for Leave to Amend Application, filed on February 20, 1998, by August; (d) Consolidated Comments in Support of Joint Request for Approval of Settlement Agreement and Petition for Leave to Amend Application, filed on February 27, 1998, by the Mass Media Bureau ("Bureau"); (e) a Petition for Leave to Amend, filed on March 2, 1998, by Stephens; (f) an Erratum to Petition for Leave to Amend, filed on March 3, 1998, by Stephens; (g) a Petition for Leave to Amend Application, filed on March 3, 1998, by August; (h) a Petition for Leave to Amend Application, filed on March 6, 1998, by August; (i) a Supplement to Petition for Leave to Amend Application, filed on March 11, 1998, by August; and (j) Comments in Support of Petition for Leave to Amend Application, filed on March 17, 1998, by the Bureau.

Background

2. Stephens, August, and Grass Roots are the last remaining applicants in the Round Rock, Texas, proceeding for Channel 290C2. They originally filed their applications in July 1988 and their applications, together with nine others, were designated for hearing in January 1991. Round Rock Ventures, 6 FCC Rcd 277 (MMB 1991). Hearing sessions were held in November 1991 and June 1992, and the record was closed on June 30, 1992. Order, FCC 92M-747, released July 2, 1992; Tr. 1861.

3. Thereafter, this proceeding was frozen by the Commission's Public Notice, FCC Freezes Comparative Proceedings, 9 FCC Rcd 1055 (1994), in light of the decision of the Court of Appeals in Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993). Bechtel held that the integration of ownership into management criterion used by the Commission to decide among competing applicants was unlawful. This proceeding has now been settled and the Petitioners request approval of their Settlement Agreement and a number of related amendments.

#### Stephens' Petition for Leave to Amend

4. Stephens seeks leave to amend her application to change the identity of the applicant from Stephens, an individual, to the Elinor Lewis Stephens Charitable Remainder Trust ("Stephens Trust"). No other changes in the application or in the information previously reported to the Commission are being made. In support, Stephens states that, as the sole trustee of the Stephens Trust, she remains in full control of the applicant. Stephens further states that, by changing the applicant to the Stephens Trust, she will realize a significant tax benefit from the settlement of this proceeding.

5. Stephens' unopposed Petition will be granted and her amendment accepted. Suffice it to say, although the amendment is voluntary, it meets all of the other elements of the Commission's good cause test. See Erwin O'Conner Broadcasting Co., 22 FCC 2d 140, 143 (Rev. Bd. 1970). Moreover, it is well established that an applicant is permitted to effectuate a pro forma change in its structure provided that the ownership of the applicant remains the same. See Anax Broadcasting, Inc., 87 FCC 2d 483, 487-88 (1981); see also Cannon Communications Corporation, 3 FCC Rcd 4291 (¶ 2) (1988); Irving A. Uram, 61 RR 2d 1266 (ALJ 1987).

#### Joint Request for Approval of Settlement Agreement

6. The Petitioners have entered into a Settlement Agreement which they have attached to their Joint Request. Pursuant to that agreement, the applications of the Stephens Trust and Grass Roots would be dismissed, Hicks, a new party, would pay consideration to each of the dismissing applicants and to August, and August's application would be granted, with Hicks substituted for August as the surviving applicant. To implement this proposal, August filed its February 20th amendment, which seeks the substitution of Hicks as the applicant, and its March 6th amendment, which seeks leave to substitute a new technical proposal for the one originally submitted to the Commission.<sup>1</sup>

7. The Bureau has reviewed the Settlement Agreement and August's amendments and submits that the Petitioners have complied with all relevant requirements of the Communications Act of 1934 ("Communications Act") and the Commission's rules, including the multiple ownership rules. Further, the Bureau notes that Hicks' qualifications have been repeatedly passed upon by the Commission and that, considering Hicks has an attributable interest in

---

<sup>1</sup> August's technical amendment contemplates locating the Round Rock FM transmission facility on an existing tower and master antenna in the Austin, Texas, area.

connection with authorizations in the Austin, Texas, market, which includes Round Rock, publication of the substitution in accordance with Rebecca Radio of Marco, 4 FCC Rcd 830, 833 (¶ 29) (1989), is not necessary. In addition, the engineering staff of the Bureau has reviewed August's technical amendment and has determined that it conforms with the Commission's rules.

8. The Joint Request will be granted and the Settlement Agreement approved. Congress recently enacted Section 3002(a)(3) of the Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (1997), which added a new Section 309(l) to the Communications Act. Section 309(l)(3) requires the Commission, during the 180-day period after enactment, to "waive any provisions of its regulations necessary" to permit persons, who, before July 1, 1997, filed competing applications for construction permits for new commercial radio or television stations, "to enter an agreement to procure the removal of a conflict between their applications." In accordance with this mandate, the requirements of Section 73.3525(a) of the Commission's Rules pertaining to the amounts which may be paid to the Stephens Trust, August, and Grass Roots will be waived. Gonzales Broadcasting, Inc., 12 FCC Rcd 12253, 12255-56 (¶ 10) (1997).

9. Moreover, the Commission has indicated that, in order to facilitate resolution of frozen hearing cases, it is inclined to waive its policy against settlements involving the award of a construction permit to a non-applicant third party such as Hicks. Implementation of Section 309(j) of the Communications Act, FCC 97-397, released November 26, 1997 (¶ 26). Indeed, in Edward P. and Pamela J. Levine, FCC 97I-41, released December 29, 1997 (OGC), and Lisa M. Harris, FCC 98I-11, released March 16, 1998 (OGC), waiver of the policy was found to be in the public interest. Consequently, it would be appropriate to waive the policy here in order to allow Hicks to obtain the construction permit.

10. The Petitioners have also shown that their Joint Request complies in all respects with the requirements of Section 311(c) of the Communications Act and the provisions of Section 73.3525(a) of the Rules. Thus, the Petitioners have provided sworn statements that there has been no consideration paid or promised for the dismissal of the Stephens Trust and Grass Roots applications, or for the amendment of the August application, other than that disclosed in the Settlement Agreement, that their applications were not filed for the purpose of reaching or carrying out a settlement agreement, and that approval of the agreement will serve the public interest by facilitating the institution of new FM radio service for Round Rock, Texas, and by terminating this litigation. Finally, good cause having been shown, August's petitions for leave to amend, which implement the Petitioners' settlement proposal, will be granted and its amendments will be accepted.

#### Ordering Clauses

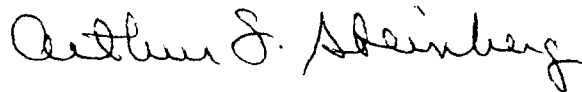
Accordingly, IT IS ORDERED that the Petition for Leave to Amend Application filed by August on February 20, 1998, the Petition for Leave to Amend filed by Stephens on March 2, 1998, the Petition for Leave to Amend Application filed by August on March 3, 1998, and the Petition for Leave to Amend Application filed by August on March 6, 1998, ARE GRANTED and the accompanying amendments ARE ACCEPTED.

IT IS FURTHER ORDERED that the Joint Request for Approval of Settlement Agreement filed by the Petitioners on January 30, 1998, IS GRANTED, that the Settlement Agreement attached thereto IS APPROVED, and that the applications of the Stephens Trust and Grass Roots ARE DISMISSED with prejudice.

IT IS FURTHER ORDERED that the above-captioned application of August Communications Group, Inc., for a construction permit for a new FM station on Channel 290C2 in Round Rock, Texas, as amended to substitute R. Steven Hicks as the applicant, and as amended to substitute a new technical proposal, IS GRANTED.

IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, reading "Arthur I. Steinberg". The signature is written in a cursive, flowing style.

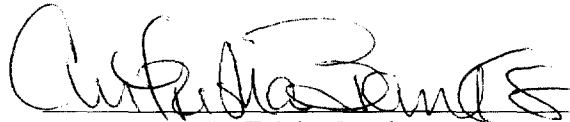
Arthur I. Steinberg  
Administrative Law Judge

## **CERTIFICATE OF SERVICE**

I, CurTrisha Banks, certify that I have, on this 2nd day of June, 1998, sent by regular United States mail, a copy of the foregoing, "Compliance and Information Bureau's Motion for Summary Decision" to:

Joseph Frank Ptak  
505 Patricia Drive  
San Marcos, Texas 78666

Administrative Law Judge Richard L. Sippel  
Federal Communications Commission  
2000 L Street, N.W., Suite 218  
Washington, D.C. 20554



CurTrisha Banks